NICODEMVS FOR CHRIST,

OR THE RELIGIOVS MOOTE OF AN HONEST LAWYER:

DELIVERED IN A Sermon, preached at the Assises at Okeham, in the County of *Rutland*, *March.*10.1627.

By ANTONY FAVVKNER, Master of Arts, and late Student in *Iesus* Colledge in *Oxford.*

IOB 29.16.

I was a father to the poore, and the cause which I knew not, I searched out.

LONDON
Imprinted by *Felix Kyngston* for *Robert Allott*, and are to be sold at his shop in S. *Pauls* Churchyard at the signe of the Beare. 1630.

BRITISH MUSEUM

TO THE WORSHIPFVLL MY HONORED GOOD FRIEND MOSES TRYON ESQVIRE, Grace, Mercy and Peace.

SIR,

A Godly liberality is not much different from a frugall prouidence; 'tis but a letter of Returne, by which we shall receiue in heauen what we haue wisely laid out on earth: for hee that hath pitie on the poore, lendeth vnto the Lord; and looke what hee layeth out, it shall be payed him againe, *Prou.*19.17. So that the practise of this piety, is the most aduantagious vsury: for we lend but temporals, but we shall receiue both the Principall and Interest in

Eternals. Happy might all Gods temporall Stewards be, if they would so imploy their golden Talent. Concerning your owne particular, I will onely thus much say, The prayers of the poore for you will sooner present your charity to God, then the prayses of my Pen can vnto the World. And as for the no meane apprehension of your fauour and good meaning towards my selfe, I can returne no other, saue the poore mans tribute, prayers and thankes: of which this slender Present, the thinne gleanings of a Country Labourer, is a faithfull, though vnproportioned testimony. Which if you but as kindly accept, as it is freely offered, you shall *accipiendo dare*, be bounteous in receiuing, and so deserue new thankes abundantly gratifying him, who alwaies vnfainedly desires

By you and yours in all Christian seruice to be commanded,

Anthony Faukner.

EGREGIO VIRO PETRO TRYON, ORNATISSIMI VIRI Mosis TRYON Armigeri filio natu maximo Εὐσεβεστάτου.

REi priuatæ ſatago: Nec humili fortunæ competit inuitâ quodammodo Lucinâ, fœtum quem vix peperiſſe auſa eſt in apricum ſeuerioris Criticorum fronti exponere. Satiùs familiari gratandum eſt lari, tutiuſque tyronibus domeſticâ declamare in porticu. Equidem lubentiùs labiorum vitulos feciſſem in ſalutem Mæcenatis quàm literas haſce publicâſſem in ipſius gratiam; niſi quòd nobis, dignitatem tuam (Generoſe vir) αὐτοπραγίαν iſtius noſtræ vectigal iure proprio vendicâſſe, ſolutumque parumper in hoc Xeniolo cenſuque modico tributum æqui conſulturum iri, meridianâ luce clariùs innotuiſſet. Ad teipſum quod attinet, ne quæ è caſto & ſyncero deprompta ſunt pectore, adulterina videantur & fucata adulantis ingenij deliramenta, rem paucis expediam. Depoſitis collo Bullâ Laribuſque adhuc ſub vmbonis candidi priuilegio mediâ iuuentute egiſti virum, adeoque ſubitaneo virtutis incremento minutatim defluentes annorum & ætatis fefelliſti moras,

vt præcoce quâdam matureſcente indole gradatim quaſi & pedetentim ſequaces Naturæ greſſus præueniſſe videaris. Mucos ergo emungant proprios rugoſa Hypercriticorum ſanna. Vacillans adhuc noſtræ Theologiæ ſoboles hæc & decidua, pene dixerim primis infantiæ vagiens incunabulis, ſub tuis modò ſuccreuerit auſpicijs, abundè mihi videbitur conclamatum Ἰὸ Παιὰν, *fruarque votis vſque ad inuidiam fælicibus*

Sigillatim tuus,

Ex Muſæo meo vndecimo
Kalend. Septemb. 1629.

Antonius Fawkner.

NICODEMVS FOR CHRIST, &c.

Ioh. 7. 51.

Doth our Law iudge a man before it heare him, and know what he hath done?

MAiesty is an embleme of Diuinity, and Magistracy the visible character of an inuisible Deity. So that as men are the best of Mortals, Iudges also are the best of men, and are by so much liker their Creator, by how much his Warrant authorizeth them aboue his creatures. Men indeed are like God by a benefit in their creation: Iudges more like him by the addition to their creation of the preheminency of their function. Men are like him in the fabrick of their soules, they, more like him, because both in that, and the excellency of their Office. If then *Melancthon* may rearme men Earthly gods, in respect of inferiour creatures, why may not *Dauid* stile Iudges transitory gods, in regard of inferiour men?

men: *I haue said, ye are gods*, Psal. 82.6. The Lord indeed is God of gods, but he hath selected these to be gods to men. Yet though God permit them to partake of his Authority, tis with a condition, that they shall partake of his Iustice too. God workes all for his owne glory, and his infinite glory is his infinite Iustice. Now because power is the supporter of Iustice, God makes thē great, not because they should be great, but because by being great, they might dare to be iust. Those then whom God makes great, wee deeme to be good, so that their place begets a reuerence; their reuerence, feare; and greatnesse mixt with goodnesse produceth imitation: insomuch that Honour becomes Example, and Iudges liues, the peoples rules. So that they liue not their owne liues alone, but other mens; and the perill of their soules hazzards others. As then there is no deformity so vgly as corrupted beauty, so no Calling so wicked, as the best turned bad. Bad in it selfe, worse by example; worst, if at all bad, because it should be best; most dangerous, because most eminent. *Adam* indeed sinned, yet still continued man; but if Angels transgresse, they can be no lesse then Diuels. Peasants may turne Pagans, and none take notice: but if *Iulian* become an Apostata, an Empire is in danger. *Ieroboams* transgression made Israel to sinne; and though the people compell *Aaron* to make an Idoll, yet if he doe it, being a Magistrate, he brings the sin vpon them, Exod. 32.21. *He that beleeues in me*, saith Christ, *out of his belly shall flow riuers of waters of life*,

life, Ioh. 7. 38. An ample reward of the Iewes beliefe, if they had believed. And (poore soules!) many had believed, had not the example of their Rulers hindred their beliefe. *Many* resolued that he was the Prophet, Vers. 40. Some confessed he was the Christ, Vers. 41. Yea, and the frozen consciences of the barbarous Officers, which went with a full resolution to arrest him, were so thawed, that, let the Magistrates thinke will or ill, they must needs confesse, that *Never man spake like this man*, Vers. 46. Their consciences acknowledged him, their tongues confessed him: yet (for the force of example from Authority!) the wicked thinke to stop their mouthes with this owne question, *Doth any of the Rulers or Pharises beleeue on him?* Vers. 48. Nay, immediately with open mouth, according to their old fashion of balling *Templum Domini, Templum Domini*; The Temple of the Lord, The Temple of the Lord: or, *We have a Law, and by our Law hee ought to dye*, they would condemne him vntried against the Law: and in the next verse out-law him and his, with a dire Anathema, ἀνάθεμα ἐστιν. This rout, this Many which know not the Law is cursed, Vers. 49. So would they haue sterned the Law by their owne passions, till *Nicodemus* returnes the curse vnto the heads of the cursers, and mauger their bragging of their skill in the Law, convicts them of iniustice by a question from their owne Law; μὴ ὁ νόμος ἡμῶν κρίνει τὸν ἄνθρωπον, ἐὰν μὴ ἀκούσῃ παρ' αὐτοῦ πρῶτον, καὶ γνῷ τί ποιεῖ; *Doth our Law iudge a man before it heare him, and know what he hath done?* Not to

Ier. 17. 4.

Ioh. 19. 7.

De simili quæstione vide Beza in S. Mat. 7. 22.

be tediously curious vpon the words. The Verse is such a question, as may be naturally resolued by a Negatiue position; and that easily done by the Metathesis of the particle interogatiue, transferred from the subiect to the implicite *Copula*: so that Μὴ νόμος ἡμῶν κρίνει, &c. *Doth our Law iudge a man before it heare him, and know what he hath done?* is equiualent, and the same with ὁ νόμος ἡμῶν μὴ κρίνει, &c. *Our Law doth not iudge a man before it heare him, and know what he hath done.* And my Text so vnderstood, may seeme to be *Solstitium solis Iustitiæ*, The Solstice of Iustice. It must not bee idle, but proceede thus farre: nor is it boundlesse, it proceeds no further. It must iudge, else 'twould not be Iustice: it must iudge within the limits of these conditions, else 'twould be iniustice. The question is already become a position; let vs once againe turne the Negatiue position to an affirmatiue proposition; and that not by the dislocation of one Negatiue particle, but the exemption of them all. If then our Law doth not iudge a man before it heare him, and know what hee hath done; it followes, *à contrarijs*, that our Law doth iudge a man, if it heare him first, and know what he hath done. And the Text thus taken, points at two things, Νόμον and κρίνειν; the Law in the first part; Our Law doth iudge a man; and the Iudge in the second; If it heare him before, and know what hee hath done. The first part shewes vs Νόμον ἄψυχον, the rule of Iustice, the Law dead without the Iudge. The second points out Νόμον ἔμψυχον, the liuing Law, the Iudge, corrupt without the Law.

Law. Againe, the firſt part containes two things. Firſt, the Rule of Iuſtice, ὁ νόμος, the Law; noted by her coate of difference, ὁ νόμος ἡμῶν, our Law, the Iewes Law, Gods Law. Secondly, the act of Iuſtice, Iudgement, ὁ νόμος ἡμῶν κρίνει, Our Law doth Iudge; and that againe attended with its obiect, *circa quod*, τὸν ἄνθρωπον a man. In the ſecond part are euident two eſpeciall neceſſaries to a good Magiſtrate: The firſt is diligence, ἐὰν ἀκούσῃ, hee muſt heare; and that both πρότερον, before hee proceede to ſentence; and παρὰ τοῦ, of him that is accuſed. The ſecond is knowledge, and that both of the fact, and the manner of the fact, ἢ γνῷ τί ποιεῖ: And know what he hath done. Of theſe (the God of Truth aſſiſting) and firſt of the firſt, the Rule of Iuſtice.

ὁ νόμος, *The Law.*

Sine lege ſunt quæ ſine ordine ſunt, ſaith an Ancient; Order is one end of the Law, God the Author of all Order. Hee might haue created the World as well in one day, as ſixe; and all at once as eaſily, as Heauen firſt, and Man laſt: but by his wiſedome were all things made, and the God of Order would be the example of Order. Now as all is made, all muſt be ſuſtained, leſt Order ſhould againe be ſwallowed vp in confuſion. So that as all was created in order, all muſt bee ſo created, that it may remaine in order. Wherefore God will at once be κτίστης and νομοθέτης, a Creator and a Lawgiuer; and with the ſame *Fiat* rouze from confuſion and command to obedience. Each creature is ſo made it ſelfe, that it cannot be ought

Gilbertus in Cantica. ſer. 30.

Philo Iudæus de Fabric. Mundi.

saue it selfe. The wisedome of his bounty giues it a Beeing; the wisedome of his order giues it but one Beeing. Nor is this order in essence only, but in the consequents of it, its qualities. The nimble fire will be aboue, and not below; the fullen earth onely below. The two great Lights haue their alternate courses. The Sea may threaten, cannot Domineere, it must ouerflow so much earth, and but iust so much. Thus the Decree of God checkes all Natures: his Word created by a secret power; his Wisedome gouernes by an eternall Law. *By the Word of the Lord were the Heauens made*, Psalm. 33.6. *and he made a Decree for the raine*, Iob 28.26. Now though all things are, and are guided by this eternall Law, yet this *Summa ratio*, (so S. *Augustine* stiles it) this supreme directiue rule, though it bee *aliqualiter* (as the Schooleman limits) in some sort in all creatures subiect to the Diuine prouidence; yet I say more especially, more eminently it shines in man. So that by this more excellent impression of the eternall Law, there followes a participation of that Rule in man; by which hee hath an inbred inclination to the accomplishment of his proper acts and ends. Which participation of the eternall Law is defined to be the Law of Nature. By the light of which wee may easily view what should be done, by our naturall inclination to what wee would doe. God hath made vs to be men, and the nature of men constraines vs to be sociable. Yet is not Nature so blind a guide, nor so vniust a Mistresse, as to command society, and not to instruct

S. Augustin. de lib. arb. c. 6.

Aquin. 12. q. 92. Art. 2.

vs how to conserue it. Wherefore she hath written in our vnderstandings one wise lesson, from which our working intellectuals may deduce the rest of all her precepts. And this generall Statute is *Eligere bonum & vitare malum*; The common instruction of Nature is, that wee should imbrace what is good, and shunne euill. Tis an euill against Nature to destroy the worke of Nature; from thence is concluded the Law, *Thou shalt not kill.* The conseruation of humane society commands, that euery man should haue his owne; from thence is enacted the Law, *Thou shalt not steale.* So that that generall maxime is inuiolable. *Dionysius* knew it, when he confessed, τὰς μὲν τῆς πόλεως διάσασθαι νόμους δύνασθαι, τὰς δὲ τῆς φύσεως μὴ δύνασθαι. The constitutions indeed of publike estates may be violated, the generall Law of Nature cannot. But from it, as from a common source, proceedes in some sort the whole streame of morall vertues, which, as the Law, are what they are, by the rule and square *Rectæ rationis*, of a directiue reason. So that *Plato* stept not much awry, when hee would haue νόμος the Law receiue its Etymologie from νέμος, or νῦς, the mind, considering the Law is indeed *dictamen rectæ rationis*, the constitution of Reason, the proper faculty of the discoursing minde. This Law of Nature then is the image of the Eternall, and from it may arise the principles of morall vertues. Saint *Ambrose* in other words saith as much, if not more, diuiding this Law of Nature into three parts. The first teacheth to giue, and so to giue honour to our Creator, as not to impart or

Plutarc. Ἀπορθ. 17.

Plato de legibus lib. 12.

S. Amb. in epist. ad Rom. c. 5.

ſhare it to any of his creatures. The ſecond part is morall, inſtructing vs to liue by the rule of modeſty and vertue. The third, Preceptiue, commanding vs to furniſh others with the knowledge of our Creator, God, and ſeaſon them with the precepts of vertue and morality. And ſo the Gentiles which had not the Law, did by Nature the things contained in the Law, and hauing not the Law, were a Law vnto themſelues, Rom. 2. 14. Now becauſe, by reaſon of the imperfect eſtate of our depraued nature, our paſſions will ſwell to perturbations, and can receiue ſuch ſtrength from the Law of ſinne, that they are able impetuouſly to rebell againſt the Law of Nature, it is neceſſary that from the common precepts of Nature (as particular and vnknowne concluſions are drawne from common and apparent principles) mans vnderſtanding ſhould deduce and enact other ſeuerall Canons for the more particular diſpoſition of the community in order: which ſhould deterre thoſe from vice by feare of puniſhment, whom the inſtructions of Nature cannot perſwade to be good by loue to vertue. And ſuch like particular conſtitutions drawne from the Law of Nature, which is deriued from the Eternall, receiue a third denomination, diſtinct from both the former, and are intituled, *Lex Humana*, or *Poſitiua*, the Humane, or Poſitiue Law. Such as were amongſt the Heathen, *Draco's* Decrees, which (as *Budæus* notes) were more eſpecially termed θεσμοὶ, *Theſes*, Poſitions, ſetled or determined ordinances: which though in regard of the

Bud. com. Græc. fol. 1033.

Law-

Law-giuers, and the acts of men, to which onely they are a rule, they may be termed Humane; yet after iust and due enacting by the authoritie of the publike assent, or publike person, and the open receipt of thē after promulgation in the time and place of concourse, as amongst the Athenians, and *Die trinundino in Foro*, in the open Market place amongst the Romanes; then Religion tels vs, that *Lex* the Law takes its name from its owne *Etymon à ligando* from binding. So that whatsoeuer is subiect to the superior power, is consequently subiect to the Law of that power. Which insomuch as it partakes (though but mediately and remotely) of the eternal Law, binds the inferior subiects to its obseruance, yea, *in foro conscientiæ*, by the tye of Religion and Conscience. There is no power but of God, *Rom.*13.1. *Wherefore yee must bee subiect, not because of wrath onely, but also for conscience sake*, Vers.5. *By me* (saith the Lord) *Kings reigne, and Princes decree iustice. By me Princes rule, and the Nobles, and all the Iudges of the earth*, *Prou.*8.15,16. *Whosoeuer then resists the power, resists the ordinance of God*, *Rom.*13.2. It followes then, that none, no not the righteous are exempted from obedience to this Humane Law, as it is a directiue Rule, or guiding power; though in respect of its coactiue authoritie they are priuiledged, as preuenting compulsion by voluntary obedience. And in this sense indeed the Law is not giuen to righteous men, but to vngodly, 1.*Tim.*1.9. And Saint *Paul* may bee an exegeticall Commentator on this place in another: For Princes are not to bee fea-

Postellus de Magistrat. Athen. cap.5.

red

red for good workes, but for euill, *Rom.* 13.3. Nor are we onely bound to submit our selues to the iudgement of this Law, but Magistrates are as much required, to frame and proportion their determinations according to this Law. The square then of our actions must bee the rule of their iudgements, and that Λόγος ὁρίσμενος must be as definitiue of their censures as our deeds. *Xenophon* tels, that *Cyrus* learnt of his Tutor, that there was no difference betwixt Νόμιμον and Δίκαιον, lawfull and iust, and as little betwixt Ἄνομον & Βίαιον, lawlesse and violent; so that hee seemed to confine Iustice to Law, and would alwaies proceed according to Law, lest at any time he should seeme vniust. Such force then is in the Law, that it binds all processe in Iustice to be according to the Law. So that he which in the administration of iustice strayes from the order of the Law is as much an offendour, as he whom he condemnes as a transgressor of the Law. And therfore the Athenians thought it a small conuenience to their Commonwealth to prouide Νομοθέτας, Law-giuers vnlesse they had also appointed Νομοφύλακας, a sort of superiour Gouernours to receiue an account from the Iudges of their common and ordinarie proceeding according to the Law. *Plato* would haue the Law as a picture, by whose proportion, as by a patterne and exemplar, Magistrates should forme their censures. *Iudex*, the Iudge is but *Iudicens*, not the maker, but the speaker of the Law; *Administrator Iudicij* (as an interpreter of *Philo*) The iudgement is Gods, hee is but the pronouncer;

Xenophon Κυροπαιδ. βιβ. α.

Postellus de Mag. Athen. c. 6.

Plato de leg. Dial III.

Varro de ling. Latin. lib. 5.

Christoph. interp. Philon. Iudæi. de offic. Iudicis.

cer; and amongst the Romanes, *Suetonius* ranking the most choise and honourable titles which the Emperour *Augustus* bestowed vpon his beloued *Tiberius*, registers *Diuem* [illegible]. That hee was a Gouernour precisely obseruing the prescript of the Law. And no lesse honour might *Felix* seeme to haue deserued, who would not for fauour deliuer Saint *Paul* to death against the custome of the Romanes, *Act.* 25. 16. And *Ahashuerosh* might haue been an example to them both, not giuing sentence according to his owne angry humour, but the Nations decrees; *What shall wee doe with the Queene Vashti according to the Law? Ester* 1. 15. Sure I am that such a one was *Nicodemus*, who askes not in my Text [illegible], *Doth the Iudge?* but [illegible], *Doth our Law iudge?* As if the Iudge could not decree, but the Law; or if the Iudge, yet as onely directed by the Law. Or if the Heathenish Romanes, vnder whose dominion they then were subiect, had had such a barbarous Law, as to iudge a man before accused or heard: yet sith the Iewes were vnder the Couenant, and immediately directed by the Law of God, hee inquires further, [illegible], *Doth our Law so?* which is the next considerable.

[illegible], *Our.*

The Law of the Lord is an vndefiled Law: Psal. 19. 8. *Moses* might heare it from God, as accepted for holy; Israel might heare it onely from *Moses*, as but onely called to bee made holy. Israel must not touch Mount Sinay, no not touch it lest

they die, though it bee to heare the Law, by the performance of which they should liue. Gods Maiesty would promulge it in thunder and darkenesse, that all might heare and tremble: his Mercy would ingraue it in Tables of stone, that all might see and reioyce. Here *Ius Gentium* becomes *Ius Iudaicum*, and the inuiolable decree of Nature made stronger by the promulgation of God. False witnesse is a fault against Nature, yea, and a sinne against God. *Thou shalt not beare false witnesse against thy neighbour: Exod.* 20.16. God is truth, falsehood is his enemie. *God is Iudge: Psal.* 50.6. And *shall not the Iudge of all the World doe right? Gen.* 18.5. No man must be condemned by his Law *indictâ causâ*, his offence not proued; but at the mouth of two or three witnesses the matter must be established: *Deut.* 19.16. *Moses* deliuered this Law to the Iewes when they dwelt in tabernacles, and it was yeerely repeated by the High Priest, saith *Iosephus*, at their Feast of Tabernacles. Loe then how malice may peruert Iustice! This Law was deliuered by God to *Moses*, by *Moses* to their forefathers, by the High Priest yeerely with solemnity to themselues, and by themselues daily according to Gods precept to their children, *Deut.* 6.7. and might not *Nicodemus* then iustly wonder, that being Masters in Israel they knew not this? Let them then but checke their heady choller, or shake off their lingring malice, and they may through halfe-closed eies perceiue, that God forbids false-witnesse, not witnesse. Probabilities indeed may be the ground of a suspicion, but they must

Iosep. de Antiq. Iud. lib. 4. *c.* 8.

must proue ere they can iudge; which is the next considerable, [illegible] *Doth our Law Iudge, &c.*

[illegible] *Iudge.*

Virtus à vi, say the Latine Critickes, [illegible] from [illegible] as the Greekes. Both Rome and Sparta so honoured warlike prowesse, that they esteemed it as the Soueraigne of Vertues: yea, so much, as that they would haue the name of Vertue in generall to bee deduced from strength and warre. Yet *Agesilaus*, a Spartan Prince, no lesse honourable for Prowesse then Iustice, would notwithstanding measure his greatnesse by Iustice, not Prowesse. For hearing some name the Persian Monarch according to his affected title, [illegible] the Great King, he taunts the swelling title by a question of comparison, [illegible] *I pray you in what can he be greater then my selfe, if he appeare neither wiser, nor iuster?* And although hee knew well enough which way the streame would goe in the Lacedemonians iudgements, honouring valour aboue all vertues, yet being demanded which was the Nobler, Fortitude or Iustice, he gaue sentence on Iustices side, and shewed his reason in his answer, [illegible] *Fortitude is but the guard of Iustice; and were there no Traytors that would violate her, we needed no valour to maintaine her.* Saint *Ambrose* makes good her excellency by comparing, if not preferring her to another vertue, of no lesse eminencie in a Christian, then valour in a Spartan; Benefi-

Varr. de ling. Lat. lib. 4. & Non. Marcel. de propr. Serm.

Plut. Apoph.

Plut. Apoph.

Ambr. de offic. lib. 1. cap. 28.

cence. Diuiding the whole frame of humane society into two parts, Iustice and Beneficence, of the two (saith he) *Iustitia mihi excelsior videtur, Liberalitas gratior: illa censuram tenet, illa bonitatem.* They are not vnlike the two sisters, *Leah* and *Rachel*; Birth-right preferres the one, Nature the other: Iustice is royall, Liberality beautifull. A Scepter becomes the one, Mercy adornes the other: Authority is the Crowne of Iustice, Bounty, of Liberality. S. *Bernard* anatomizeth Iustice somewhat more curiously; diuiding her, not as a sister from Beneficence; but as the whole into her two parts, Beneficence and Innocency. Now, saith he, *Innocentia Iustitiam inchoat; Beneficentia consummat.* To doe no wrong is the beginning of Iustice; to doe right the perfection. It begins in Innocency, it ends in Charity. So that *Agesilaus* his τὸ ἐᾶν τὰ ἀλλότρια, To abstaine from oppression, was but Iustice in its Innocency: it must be the *Suum cuique tribuere*, to giue each man his due: to helpe the oppressed that can crowne it with Beneficence. And indeed Iustice in this her perfection, is the Queene of Vertues, excelling all the rest, by how much a common good which she onely respects, exceeds a priuat, or personall, in which the acts of all, (at least, the most of all) the rest are terminated. But this Theame of Iustice is too large a field to runne ouer in the few remaining minutes of an houre; wherefore we will passe by it to view, and but view its act, Iudgement. Briefly then, the Learned haue as sufficiently, as concisely determined, and confined iust Iudgement vnto

Bern. Serm. paru. Ser. 11.

Xenophon. λογ. εἰς Ἀγεσίλ.

Aquin. 22. q. 60. art. 2.

three

three conditions; by the defect of any of which, the Iudgement becomes vnlawfull. First, it must be according to the rule and square of Iustice; otherwise it is peruerse, and so vniust. *Iudicium Iustum iudicate*; Iudge righteous iudgement: *Ioh.* 7.24. Secondly, it must proceed from iust authority; else it is vsurped, and then the party accused may iustly demand of such a Iudge, as the Egiptian did vniustly of *Moses*, *Quis te constituit Iudicem, &c.* Who made you a Iudge ouer vs? *Exod.* 2. 14. For he can haue no power, except it be giuen him from aboue: *Ioh.* 19.11. Thirdly, it must be *secundum rectam rationem prudentiæ*, by the approbation of reason and prudence: else if it proceed from suspicion or doubtfull, and not manifest proofes, it is vnlawfull, because rash. And in that sense our Sauiour forbids vs at all to iudge: *Matth.* 7.1. and the Law in my Text agrees with the Gospell; *Doth our Law iudge a man before it heare him, and know what he hath done.* But because this may seeme to conduce to the office of the Iudge, it may leade vs to the second part of my Text, the second necessary requisites to a good Magistrate. Which because according to the Apostles grant, I may exhort an Elder as a Father, I will touch; 1.*Tim.* 5.1. and againe, lest by a rude petulancy, or indiscreet presumption, I might seeme, against the Apostles rule, to rebuke an Elder, I will but touch, and so draw to an end. First then of the first; *audiet*, hee must heare; the Iudge must

Heare.

The order of Nature in the manner of our sen- *Diligence.*

sitiue knowledge seemes to me to be a patterne of the order of Iustice in Iudgement. Let then common sense be Queene in the part sensitiue, the vtmost confines of the world of man. The outward senses are the witnesses infallibly presenting their obiects vnto her; of which after euidence presented from them, and not before, she can onely iudge. Tis easily applied by the termes in the similitude. Tis the witnesse that condemnes the man, the Magistrate can but iudge after witnesse; yet must he make diligent search: *Deut.*19.18. He must stop one eare with *Alexander* against the witnes, and reserue it for him that is ὁ ἀντίδικος, and stands accused. Neither must he only heare, but heare παρ' ἀμφοτέρων, from him. His eares must not bee in his hands, that so by receiuing bribes, against the rules of Nature and Iustice, he should confound Hearing with Feeling. *Quomodo potest esse iustus alteri, qui studet eripere alteri quod sibi quærat?* Saint *Ambrose* would faine haue been resolued how it could possibly be, that a couetous man should bee iust, sith his care is onely to inrich himselfe, no matter by whose goods. Wherefore Gods command is, that they take no gifts, *Exod.*23.8. Again, neither must his eares bee in his eyes, when hee reades any of my great Lords letters, either to the fauour or preiudice of the prisoner. *Cato* was not more seuere then iust, when he would haue *Iudicem nec pro Iustis orandum, nec pro iniustis exorandum:* A good Magistrate neede not be intreated to fauour the guiltlesse, and should not be ouerintreated to succour the guilty. Wherefore if for

Ambr. de offic. lib.1. cap.28.

feare of any great Ones the Magistrate peruert Iustice, hee is in *Iosephus* opinion iniurious to the Almighty, and blasphemous against God. *Quasi verò* (saith he) *is infirmior sit habendus quam illi, quorum potentia metu, præter ius fertur calculus. Nam Dei potentia est iustitia.* Gods Iustice is his Power; they then which lesse feare to oppose it, then displease men, feare men more then God, and consequently esteeme them greater then God. Nor may the poore, if guilty, claime a pitty. It is due to his aduersitie, not to his sinne. *Qui autem suâ sponte se obstringit sceleribus, is non infœlix sed iniustus censendus est:* Hee which voluntarily mancipates himselfe to iniquitie, must not be pittyed because poore, but punished because wicked. So *Philo Iudaus* instructs and receiues his warrant from the Lawgiuer; *Neither shalt thou countenance a poore man in his cause: Exod.23.3.* Yee must therefore decree Ἀπροσωπολήπτως, according to Gods iudgement, 1.*Pet.*1.17. and according to his command; *Respect not any person: Deut.*16.19. Againe, hee must not onely heare παρ' ἀνηρ, from him that is accused, but also ἀπρότερον, before hee proceed to sentence. Not according to that barbarous custome reported of Clagen, a Towne in Carinthia, where vpon suspicion they condemne the man, and after trie the carcase: but according to the laudable manner of the Romanes mentioned in holy Writ; *It is not the manner of the Romanes for fauour to deliuer any man to death, before he that is accused, haue the accusers brought before him, and haue place to defend himselfe concerning the crime, Act.* 25.16. But of this

Ioseph. Antiq. Iud. lib.4. cap.18

Philo Iud. de offic. Iudicis.

Sel. Munster. Cosmog. de Vngaria.

Budaeus com. Graec. fol. 1349.

this before. To returne then: *Budaeus* notes two other significations of ἀκούειν. The first is, *Interpretari*, to interpret. Notwithstanding, indeed the Law written hath been heretofore said to bee ἐπὶ τὸ πολὺ, for the most part the guide of Iudgement; yet because mens actions by their seuerall multiplicity may seeme to bee infinite, and from thence may arise sundry particular cases, which the Law in its generall mandates seemes not directly to aime at, nor foresee, by reason of diuers circumstances, perchance extenuating the nature of the fact, it would seeme harsh, that these should be censured by the rigour of the letter. Wherefore in the Iudges breast there may rest an ἐπιείκεια, or middle equity, tempering Iustice by the milder interpretation of her Law, lest shee should seeme seuere, yea, euen to iniury: yet so proportioning the Law to the fact, that it may not seeme violated, but mitigated; not neglected, but perfected. *Artaxerxes* could not recall his sentence by the Persian Law, but hee would oft-times asswage it, cutting off the head-tyre for the head. And no lesse humanity was in the Emperour *Seuerus*, whom *Tertullian* testifies, *Suffundere maluisse sanguinem quam effundere*; Hee had rather punish *rubore*, then *morte*, by shame then death; and it was esteemed a better tempered iustice for a light offence, by a blush of shame to bring the blood into the offenders face, then by the axe of execution to spill it on the ground. And this equity the Preacher approoues, by disallowing its contrary; *Be thou not iust ouermuch: Eccles. 7. 18.*

Aristot. Eth. 5. c. 15.

Esth. 1. 19.

Brissonius de Regibus Pers. lib. 1.

Tertul. Apol. aduers. Gent. cap. 4.

Hugo Card. in Eccles. 7. 18.

he

he shewed his reason in the precedent verse; *For there is a iust man that perisheth in his iustice:* Vers.17.

The other sense of ἀιδεῖν is *Intelligere* to vnderstand, or know which leades me to the next generall requisite to a good Magistrate:

Knowledge.

How necessary knowledge is to a Iudge, may bee somewhat euident by the meaning of the word κρίνω in my Text, which is to Iudge; but hath a neerer signification, *secerno*, to seperate, or diuide one thing from another by election or refusall, which intimates a knowledge. After God had promised *Salomon* his request, 1. *King.* 3. 5. he answers by asking in the ninth verse, *Giue vnto thy seruant an vnderstanding heart, that I may discerne betweene good and euill.* Wherefore because experience is the mother of knowledge, and age most grounded in experience, the Iewes Gouernours were the Elders of their Cities. Not vnlike which Magistracie, was the Athenians Ἐφορία, not to bee better expressed then by a third example, the Romans Senate. But, not to walke vpon this beaten tracke, my Text briefly appoints two things most especially to be knowne. The first is τὶ, what it is that is done; whether an easie slippe, or a foule transgression; and (as *Hugo Cardinalis* comments) *ad quem finem*, for what intention, for that measures the action. The second, τὶ γινῖ, what is done, in act, not intention, for that makes the intention compleate. But the time checkes. A word of exhortation, and so an end. *Knowledge.* *Hugo Card. in S. Joh. c. 7. v. 51.*

Though I doubt not (Right Honourable) that *To the Iudge Iustice Hutton.*

your wisedome may preuent my admonition, yet I know a vocall warning, especially from a Pulpit, the Oratory of God, hath its special force and peculiar energy. *Philip* of Macedon knew well enough that he was a man, yet he would euery day be told so. Wherefore I beseech you, and not onely you, but all the inferiour Iudges, euen to Iurours, and the like, to whom the whole scope of my Sermon is as applicable, as vnto your selfe, that you will beare a few words of exhortation. They are but a few. To day is *Dies Criticus*, a blacke and gloomy day of Iudgement: a little Doomesday, a type of the great one. When yee therefore iudge, consider with your selues seriously these few particulars. First, what you are that iudge. Sure youle blush when you call to minde: Dust of dust, a clayie lumpe, a heape of ashes. *Terra terram iudicat*, Earth iudgeth earth, Now yee are gods, but you shall die like men: to day you take away life, to morrow you may lose your owne. Nor are you exempted from the common lot of humane misery. Now is the prisoners course, very shortly may bee the best of ours. If then you peruert iustice while the staffe is in your hand, expect a deserued misery; ἐχεῖ θεὸς ἐκδικὸν ὄμμα, God will punish you, *lege talionis*, by a iust Law of *paritie*. *Væ qui prædaris, &c.* Woe vnto thee that destroyest: *When thou hast made an ende of doing wickedly, they shall doe wickedly against thee: Esay* 33.1.

Psal. 82.6,7.

Hom. Βατρο χομυομαχ.

Goe too then, grind the face of the poore; accept persons in iudgement, oppresse the widdows

and

and fatherlesse crying for iustice; shed innocent blood. But stay, and heark, the Preachers trumpe summons thee before God by a fearefull *Scito*, *Know that for all this thou shalt come to iudgement: Eccles.*11.9. Thou mayest indeed kill the innocents body, but *ex ore tuo condemnaberis*, thy sentence shall rebound, and by a mortall recoyle pierce thine owne soule. Secondly, consider in whose place you sit. In the seat of God, the iust God, and the mercifull God. Sing therefore with *Dauid* in your actions both mercy and iudgement vnto the Lord. Destroy betimes all the wicked out of the land: *Psalm.*101.8. yet be mercifull also as your Father is mercifull: *Luk.6.36.* Thirdly, remember in whose presence you iudge: againe, in the sight of God, a iust God, a iealous God, a terrible God, a God that will auenge vnto the third and fourth generation. Hearken then vnto the caueat of *Malachies memento*; *Remember yee the Law which he commanded, with the Statutes and Iudgements: Malach.*4.4. *For it is a fearefull thing to fall into the hands of the liuing God: Heb.*10. 31. Neither deceiue your selues with a vaine secrecy, saying, The Lord shall not see, nor the God of *Iacob* regard. Shall not he which planted the eare heare? or he which formed the eye, shall not he see? His eyes are ten thousand times brighter then the Sunne; darkenesse is to him as the noone-day; yea, the righteous God searcheth the heart and reines: *Psal.*7.9. Iustice is Gods honour, and the Lord is iealous of his glorie. If therefore you transgresse, hee will surely find it

out. The offendours indeed of mans Law may escape the punishment, saith the Heathen *Xenophon*) οἱ μὲν λανθάνοντες, οἱ δὲ βιαζόμενοι, some by a priuiledged greatnesse; some by a subtile priuacy: but they that transgresse against Gods Law, must needs vndergoe the censure, Ἣν οὐδεὶ τρόπῳ δυνατὸν ἀνθρώπῳ διαφυγεῖν, (as the same Author) which a man can by no meanes auoide: for it is impossible to escape Gods hand. Can any hide him in secret places, that I shall not see him, saith the Lord? Do not I fill Heauen and Earth, saith the Lord? *Ier.* 23.24. If therefore yee are rebellious, and companions of theeues, euery one louing gifts, and following after rewards; if yee iudge not the fatherlesse, neither suffer the widowes cause to come vnto you, Thus saith the Lord, the Lord of Hosts, the mighty One of Israel; Ah, I will ease me of mine aduersaries, and bee auenged on mine enemies: *Isai.* 1. 23, 24. Fourthly and lastly, thinke seriously whom you iudge: the answer to which brings me to a point in my Text, hitherto of purpose ouer-passed, that the Law and Iustice might bee handled together. Τὸν ἄνθρωπον, *A man.* Μὴ νόμος ἡμῶν κρίνει τὸν ἄνθρωπον, *&c. Doth our Law iudge*

Xenop. Ἀπομνημονευμάτων βιβ. δ.

Wisd. 16.15.

A man? &c.

A man? Nec ampliùs dicam, nec opus est; I can say no more, nor neede I. A man; the Image of God; a walking world; the worke of a Trinity: *Let vs make Man, Gen.* 1.26. A man: thy brother the begotten sonne of thy naturall father *Adam*; thy brother, the politique sonne of thy Ciuill Father,

ther, the Prince; and againe, thy brother, the adopted son of thy heauenly Father, God. *Vespasian* had a combat betweene his Office and Nature: *Iustis supplicijs illachrymauit & ingemuit*, as *Suetonius*; He was an Emperour, therefore must needs iudge and condemne; he was a man too, and therefore by as great a necessitie hee must sigh and pitie. Learned *Athens*, was not void of a morall pietie, and euen that is alwaies attended with mercy. Their chiefe seate in their Στοᾷ βασιλείῳ, their iudgement-hall was Διὸς ἐλευθερίου, *Iouis liberatoris*: Their chiefest God was their pardoning God; the crowne of soueraignty is mercy. Holy Scripture honours it as much, nay more, making it a title of the true God, yea, and that a great title, for, *His mercies are aboue all his workes*. Himselfe will bee stiled, *Pater misericordiarum*, the Father of mercies, 2. *Cor*. 1. 3. And to induce vs *Patrizare*, to bee like our Father in an easie clemency, he leaues vs mercy as an inheritance, and reward of our mercy: *Blessed are the mercifull, for they shall obtaine mercy*: *Matth*. 5. 7. Yet, as man indeed beares the Image of his Creator, and ought therefore to bee seriously tried before condemned; so also a notorious malefactor beares the marke of Satan: hee hath defaced the Image of God in himselfe, and ought therefore to bee punished. Vice corrupts his Nobilitie, sinne depriues him of pitie; *Thine eye shall not spare him*. *Deut*. 19. 13. *For he which iustifieth the wicked, and he which condemneth the iust, euen they both are an abomination to the Lord*, *Prou*. 17. 15. To conclude. Blessed is that soule which

Suet. in Vespas. Postellus de Mag. Athen. cap. 25.

can be the seate of God. Which is that, saith Saint *Bernard?* Himself answers, The soule of the iust: for *Iustice and Iudgement are the establishment of his Throne: Psalm.* 89. 14. Doe iustice therefore in these three things; *Redde superiori, Redde inferiori, Redde aequali, cuique quod debes & digne celebras aduentum Christi parans in Iustitia sedem suam:* Giue to thy superiour, giue to thy inferiour, giue to thy equall; to euery of them what is their due: so shalt thou religiously welcome the graces of God into thy heart, and thy selfe in iustice bee e-stablished the holy Temple of God. Where if thou prepare him a residence in this life, hee will prouide an eternall mansion for thee in his new Ierusalem of the World to come, whither hee of his infinite mercy bring vs.

Bern. de Aduen. Dom. Serm. 3.

Amen.

Deo Trino Vni Gloria.

FINIS.

19 AP 58

Errata.

In the Latine Epistle, the second page, line 4. for ſololes, r. *ſobolis.* p. 3. l. 9. r. *well.* l. 12. r. *loc.* p. 5. in the marg. r. *Gillibertus in Cantic. Serm.* 30. p. 10. l. 7. r. *æquis &c.*